IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1192 OF 2004

ALONG WITH

CRIMINAL WRIT PETITIONS NOS.1193/2004, 1194/2004, 1195/2004, 1196/2004, 1197/2004, 1198/2004 and 1199/2004.

Fortis Financial Services Ltd. ... Petitioners
(Orig.Complainant)

Versus

State of Maharashtra & Ors. ... Respondents

Mr. Abdul Sagir Khan i/b. A.S.Khan & Associates for the Petitioners.
Ms. Manjula Rao for Respondents Nos. 2 & 3.
Mrs. M.M.Deshmukh, P.P. for State.

CORAM: S.K.SHAH,J.

DATE : 26th June,2006.

P.C.

1. In all these Writ Petitions common question of law is involved, therefore, I dispose of the same by

this common order.

2. These Writ Petitions are filed against the order passed by the learned Additional Sessions Judge, Greater Bombay, in various Revisions filed against the order of process passed by the learned Magistrate against the Respondents Nos. 2 and 3 (who are accused Nos. 2 and 4). To set the facts correctly, in Writ Petition No.1199 of 2004, Arun H. Merchant - accused No.4 is not made party and therefore he is not a party to the same.

3. After the process was issued, original accused Nos.2 and 4, who are Respondents Nos. 2 and 3 herein (except Writ Petition No.1199 of 2004), filed an Application for discharge alleging that at the time of issuance of the cheques, they had resigned from the Company as Directors. The accused No.2 allegedly resigned with effect from 31.10.1998 and accused No.4 (Respondent No.3) - Arun H. Merchant had resigned with effect from 29.7.1999. They have produced the Form No.32 along with their resignation.

4. The learned Magistrate however, did not recall the process issued for the offence punishable under Section 138 of the Negotiable Instrument Act against the Respondents. Therefore, they filed Revision

Applications and the same were allowed by the learned Additional Sessions Judge, Greater Bombay, and the process issued against the accused Nos. 2 and 4 in all these Writ Petitions (except in Writ Petition No.1199 of 2004) is recalled and they are discharged. The learned Additional Sessions Judge has held that the Form No.32 has been filed by Respondents Nos. 2 and 3. The learned Judge specifically dealt with the fact that the Respondent No.2 had resigned from the Company with effect from 31.10.1998 and the Respondent No.3 (accused No.4) had resigned with effect from 29.7.1999 and the cheques were issued after the date of their resignation and, therefore, they could not be prosecuted.

5. It is this order which is assailed in these Writ Petitions.

6. I have heard learned Counsel on both sides. The learned Counsel for the petitioner submits that in the original complaint it was alleged that Respondents Nos. 2 and 3 (accused No.2 and 4) were the Chairman, Managing Director and Director of Accused No.1 - Vitara Chemicals Limited.; that Accused No.1 had availed of a scheme of Hire Purchase facility for purchase of plant and machineries under an agreement dated 1.11.1996 and had agreed to observe and perform

all the terms and conditions. It was also averred that Respondents Nos. 2 and 3 (original accused No.2 and 4) were the Chairman, Managing Director and Director of the Company who were responsible for the management of the Company and had issued the cheque in favour of the Company for discharging their aforesaid liability. With these allegations the complaint was filed.

7. The learned Counsel for the petitioner submits that the learned Additional Sessions Judge, Greater Bombay, has committed an error in discharging the Respondents on the basis of Form No.32. He specifically pointed out the averments made in the reply stating that "It is denied that the accused has resigned." Therefore, relying on the Judgment of of this Court in Criminal Application No.4827 of 2004 in the case of **Vijay Mallya vs. State of Maharashtra & Anr.**, he submits that it is a matter of evidence whether the Respondent No.2 had ceased to be Director or not in that Company or they were continuing to manage the affairs of the Company.

8. The learned Counsel for the Respondents however submits that in two more cases, the Respondent no.2 has been discharged in one of them, in the case of D.B. Mehta and others vs. Ramesh Rikhavdas Shah,

reported in 2004 (3) Mh.L.J. page 3.

9. Coming to the Vijay Mallya's case, there it was a matter of evidence whether the Respondent no.2 had resigned and ceased to manage the affairs of the Company or not although Form No.32 was filed. In that matter,it was specifically averred on behalf of the complainant that the applicant not only denied that the Director resigned as alleged, but further contended that the complainant had placed reliance on the documents to contend that the position was that the Director continued to be in charge of the affairs of the accused Company. In this eventuality it was observed in that case that it would be a matter of evidence whether or not in fact, the Director had resigned and whether or not he was continuing to manage the affairs of the Company. In the instant case, however, what is stated is merely denial and nothing more. Mere denial would not make a case that the accused Nos. 2 and 4 were looking after the affairs of the Company even though they had resigned.

10. Under the circumstances, I do not find any illegality or impropriety committed by the learned Additional Sessions Judge. Consequently, I do not find any merit in these Writ Petitions.

The Writ Petitions are, therefore, dismissed.

(S.K.SHAH,J.)